

minor non-structural actions not requiring towing such as replacing aircraft tires due to wear and tear);

(ii) That are awarded under FAR Part 12 procedures and are for the development, production, modification, maintenance, repair, flight, or overhaul of aircraft; or otherwise involving the furnishing of aircraft;

(iii) For which a non-DoD customer (including a foreign military sales customer) has not agreed to assume the risk for loss or destruction of, or damages to, the aircraft; or

(iv) For commercial derivative aircraft that are to be maintained to Federal Aviation Administration (FAA) airworthiness when the work will be performed at a licensed FAA repair station.

(2) The clause at 252.228-7001 may be modified only as follows:

(i) Include a modified definition of "aircraft" if the contract covers other than conventional types of winged aircraft, *i.e.*, helicopters, vertical take-off or landing aircraft, lighter-than-air airships, unmanned aerial vehicles, or other nonconventional aircraft. The modified definition should describe a stage of manufacture comparable to the standard definition.

(ii) Modify "in the open" to include "hush houses," test hangars and comparable structures, and other designated areas.

(iii) Expressly define the "contractor's premises" where the aircraft will be located during and for contract performance. These locations may include contract premises which are owned or leased by the contractor or subcontractor, or premises where the contractor or subcontractor is a permittee or licensee or has a right to use, including Government airfields.

(iv) Revise paragraph (e)(3) of the clause to provide Government assumption of risk for transportation by conveyance on streets or highways when transportation is—

(A) Limited to the vicinity of contractor premises; and

(B) Incidental to work performed under the contract.

(3) Follow the procedures at PGI 228.370(b) when using the clause at 252.228-7001.

(c) The clause at 252.228-7003, Capture and Detention, may be used when contractor employees are subject to capture and detention and may not be covered by the War Hazards Compensation Act (42 U.S.C. 1701 *et seq.*).

(d) The clause at 252.228-7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, may be used in solicitations and contracts which involve the manufacture, modification, overhaul, or repair of these items.

(e) Use the clause at 252.228-7006, Compliance with Spanish Laws and Insurance, in solicitations and contracts for services or construction to be performed in Spain, unless the contractor is a Spanish concern.

[56 FR 36404, July 31, 1991, as amended at 57 FR 42631, Sept. 15, 1992; 62 FR 34125, June 24, 1997; 63 FR 69006, Dec. 15, 1998; 75 FR 32644, June 8, 2010]

PART 229—TAXES

Subpart 229.1—General

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AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 56 FR 36405, July 31, 1991, unless otherwise noted.

Subpart 229.1—General

229.101 Resolving tax problems.

(a) Within DoD, the agency-designated legal counsels are the defense agency General Counsels, the General Counsels of the Navy and Air Force, and for the Army, the Chief, Contract

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Law Division, Office of the Judge Advocate General. For additional information on the designated legal counsels, see PGI 229.101(a).

(b) For information on fuel excise taxes, see PGI 229.101(b).

(c) For guidance on directing a contractor to litigate the applicability of a particular tax, see PGI 229.101(c).

(d) For information on tax relief agreements between the United States and European foreign governments, see PGI 229.101(d).

[70 FR 8538, Feb. 22, 2005, as amended at 71 FR 14100, Mar. 21, 2006]

229.170 Reporting of foreign taxation on U.S. assistance programs.

229.170-1 Definition.

Commodities, as used in this section, means any materials, articles, supplies, goods, or equipment.

[70 FR 57192, Sept. 30, 2005]

229.170-2 Policy.

(a) By law, bilateral agreements with foreign governments must include a provision that commodities acquired under contracts funded by U.S. assistance programs shall be exempt from taxation by the foreign government. If taxes or customs duties nevertheless are imposed, the foreign government must reimburse the amount of such taxes to the U.S. Government (Section 579 of Division E of the Consolidated Appropriations Act, 2003 (Pub. L. 108-7), as amended by Section 506 of Division D of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199), and similar sections in subsequent acts).

(b) This foreign tax exemption—

(1) Applies to a contract or sub-contract for commodities when—

(i) The funds are appropriated by the annual foreign operations appropriations act; and

(ii) The value of the contract or sub-contract is \$500 or more;

(2) Does not apply to the acquisition of services;

(3) Generally is implemented through letters of offer and acceptance, other country-to-country agreements, or Federal interagency agreements; and

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(4) Requires reporting of noncompliance for effective implementation.

[70 FR 57192, Sept. 30, 2005]

229.170-3 Reports.

The contracting officer shall submit a report to the designated Security Assistance Office when a foreign government or entity imposes tax or customs duties on commodities acquired under contracts or subcontracts meeting the criteria of 229.170-2(b)(1). Follow the procedures at PGI 229.170-3 for submission of reports.

[70 FR 57192, Sept. 30, 2005]

229.170-4 Contract clause.

Use the clause at 252.229-7011, Reporting of Foreign Taxes—U.S. Assistance Programs, in solicitations and contracts funded with U.S. assistance appropriations provided in the annual foreign operations appropriations act.

[70 FR 57192, Sept. 30, 2005]

Subpart 229.4—Contract Clauses

SOURCE: 62 FR 34125, June 24, 1997, unless otherwise noted.

229.402 Foreign contracts.

229.402-1 Foreign fixed-price contracts.

Use the clause at 252.229-7000, Invoices Exclusive of Taxes or Duties, in solicitations and contracts when a fixed-price contract will be awarded to a foreign concern.

229.402-70 Additional clauses.

(a) Use the basic or the alternate of the clause at 252.229-7001, Tax Relief, in solicitations and contracts when a contract will be awarded to a foreign concern for performance in a foreign country.

(1) Use the basic clause in solicitations and contracts when the contract will be performed in a foreign country other than Germany.

(2) Use the alternate I clause in solicitations and contracts when the contract will be performed in Germany.

(b) Use the clause at 252.229-7002, Customs Exemptions (Germany), in solicitations and contracts requiring the import of U.S. manufactured products into Germany.

(c)(1) Use the clause at 252.229-7003, Tax Exemptions (Italy), in solicitations and contracts when contract performance will be in Italy.

(2) Use the provision at 252.229-7012, Tax Exemptions (Italy)—Representation, in solicitations that contain the clause at 252.229-7003, Tax Exemptions (Italy). If the solicitation includes the provision at FAR 52.204-7, do not separately list 252.229-7012 in the solicitation.

(d) Use the clause at 252.229-7004, Status of Contractor as a Direct Contractor (Spain), in solicitations and contracts requiring the import into Spain of supplies for construction, development, maintenance, or operation of Spanish-American installations and facilities.

(e)(1) Use the clause at 252.229-7005, Tax Exemptions (Spain). If the solicitation includes the provision at FAR 52.204-7, do not separately list 252.229-7013 in the solicitation., in solicitations and contracts when contract performance will be in Spain.

(2) Use the provision at 252.229-7013, Tax Exemptions (Spain)—Representation, in solicitations that contain the clause at 252.229-7005, Tax Exemptions (Spain).

(f) Use the clause at 252.229-7006, Value Added Tax Exclusion (United Kingdom), in solicitations and contracts when contract performance will be in the United Kingdom.

(g) Use the clause at 252.229-7007, Verification of United States Receipt of Goods, in solicitations and contracts when contract performance will be in the United Kingdom.

(h) Use the clause at 252.229-7008, Relief from Import Duty (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom.

(i) Use the clause at 252.229-7009, Relief from Customs Duty and Value Added Tax on Fuel (Passenger Vehicles) (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom for fuels (gasoline or diesel) and lubricants used in passenger vehicles (excluding taxis).

(j) Use the clause at 252.229-7010, Relief from Customs Duty on Fuel (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom that require the use of fuels (gasoline or diesel) and lubricants in taxis or vehicles other than passenger vehicles.

[62 FR 34125, June 24, 1997, 77 FR 19130, Mar. 30, 2012; 78 FR 37989, June 25, 2013; 78 FR 40043, July 3, 2013; 79 FR 58700, Sept. 30, 2014]

Subpart 229.70—Special Procedures for Overseas Contracts

SOURCE: 70 FR 6375, Feb. 7, 2005, unless otherwise noted.

NOTE: To obtain tax relief for overseas contracts, follow the procedures at PGI 229.70.

PART 230—COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 230.2—CAS Program Requirements

Sec.

230.201-5 Waiver.

AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 56 FR 36406, July 31, 1991, unless otherwise noted.

Subpart 230.2—CAS Program Requirements

230.201-5 Waiver.

(a)(1)(A) The military departments and the Director, Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)—

(1) May grant CAS waivers that meet the conditions in FAR 30.201-5(b)(1); and

(2) May grant CAS waivers that meet the conditions in FAR 30.201-5(b)(2), provided the cognizant Federal agency official granting the waiver determines that—

(i) The property or services cannot reasonably be obtained under the contract, subcontract, or modification, as applicable, without granting the waiver;

(ii) The price can be determined to be fair and reasonable without the application of the Cost Accounting Standards; and